

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:08CR441
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
WILLIE B. HAYNES,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's notice of appeal (Filing No. 77), the Clerk's memoranda regarding the untimeliness of the notice (Filing No. 78) and in forma pauperis status (Filing No. 79).

On October 1, 2009, the Defendant was sentenced. This Court's Judgment was affirmed on direct appeal. On September 15, 2010, this Court denied Defendant's motion for a sentence reduction brought in light of Amendment 706 to the sentencing guidelines. In doing so the Court relied on precedent from the Eighth Circuit Court of Appeals stating that a reduction is not available to career offenders. The Court allowed Defendant an extension until October 13, 2010, to file a notice of appeal from the Court's recent order. The notice of appeal was mailed from the Defendant's facility on October 25, 2010, and sent to the Eighth Circuit, which received it on October 28, 2010. The Eighth Circuit forwarded the notice to this Court.

Federal Appellate Rule of Procedure 4(b)(1)(A) provides that, under the circumstances presented in this case, a criminal defendant's notice of appeal must be filed within 14 days of the entry of the judgment or order being appealed. Federal Appellate Rule of Procedure 4(b)(4) provides that the period may be extended by 30 days upon a finding of excusable neglect or good cause.

In this case, the notice of appeal is untimely. The Defendant has not shown excusable neglect or good cause.

IT IS ORDERED:

1. The Defendant's notice of appeal (Filing No. 77) is untimely;
2. The Defendant is not permitted to proceed on appeal in forma pauperis; and
3. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 5th day of November, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge